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In the Supreme Court of the United States

October Term 1942.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CREEK, State of Oklahoma, a Municipal Corporation, et al.,

Petitioners.

vs

EVELYN SEBER, et al.,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit

BRIEF FOR OSAGE COUNTY, OKLAHOMA, AMICUS CURIAE THE INTEREST OF OSAGE COUNTY, OKLAHOMA.

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BRIEF FOR OSAGE COUNTY, OKLAHOMA, AMICUS CURIAE THE INTEREST OF OSAGE COUNTY, OKLAHOMA.

After the opinion of Mr. Stanley Reed, Acting Attorney General, to the Secretary of the Interior, dated February 13, 1937, which was copied in the appendix of the brief of the respondent in this case, the United States brought in the Northern District of Oklahoma thirteen suits against Osage County, Oklahoma, to recover taxes

paid, or to enjoin their collection. These thirteen suits presented 328 causes of action on behalf of 328 Indians, and each cause of action involved at least one and frequently several tracts of land, or parcels of real estate. The tracts of land were usually of 160 acres or more. All of those suits are still pending, but recently some of the causes of action have been dismissed by the trial court for the reason that the stipulation as to the facts disclosed that no relief could be granted.

THE OSAGE INDIANS.

It is not correct to speak of the Osage Indians as a weak defenseless people requiring the protection of the government.

When they were allotted 655 acres each in 1906 the minerals were reserved for the use of the entire tribe. In the early 1920's accruals from oil royalties exceeded $20,000.00 per annum per headright. The Osages became known as the wealthiest race of people on earth. In 1925 Congress provided for the investment of their excess or surplus funds, and it is the properties in which those investments were made, which are the subject of the litigation, now pending in the United States District Court. The Indians did not think those investments would be tax-free and neither did the Department. The Indians were not assigned to live upon the lands purchased. The $25,000.00 appropriated by Congress by the 1936 Act to pay taxes would not have paid the taxes on the real

estate involved in the litigation in the United States District Court for even one year. Some of those properties are town properties, even business properties.

The Osage Indian has his allotted homestead of 160 acres, which was merely his first selection, and few of them reside upon this allotted homestead or first selection. He has his homestead under the state law (160 acres, if in the country, and house and lot, if in town) on which he lives which, while not entirely exempt, is greatly favored as to taxes. Surely Congress did not intend to exempt a third 160 acres from taxation under the 1937 Act by merely permitting the Indian to declare that another 160 acres of land in which he had invested restricted funds was his homestead. In fact the 1937 Act presented an intention of Congress to limit the tax exemption to 160 acres. Such was the positive and clear expression of the intention of Congress in the Osage Acts herein to be noticed.

STATEMENT.

The proceedings before this Court in this case were more rapid than was anticipated, which accounts for the delay in the filing of this brief.

It seems essential to a fair interpretation of the acts to be interpreted by this Court that the other acts upon the same subject be considered and it is the hope that no decision will be rendered in this case which might be construed as applicable to the Osage Indians until the Osage Acts have been considered.

The present suits in which Osage County, Oklahoma, is involved concern the 1936 Act and the 1937 Act will be mentioned herein only in support of the contentions made concerning the 1936 Act.

The constitutionality of the 1936 Act has been questioned, but it will be assumed that that question has been thoroughly briefed and presented to this Court and the points presented herein will deal mainly with an interpretation of the Act, assuming that it is constitutional.

ARGUMENT AND AUTHORITIES.

These propositions are presented:

1. The Act of Congress of June 20, 1936, is in parimateria with other Acts of Congress concerning taxation of real estate owned by Osage Indians and must be construed with those Osage Acts, and when so construed the intention of Congress to allow each Osage Indian a tax exemption of not more than 160 acres of land is clearly shown.

2. A Special Act on the same subject controls a general act, or the Special Act must be construed as the exception to the general act even though the special act was first enacted.

3. In determining the purpose and meaning of the Act of June 20, 1936, the court should take into consideration the amendment of that Act by the Act of May 19, 1937.

4. The Act of June 20, 1936, taken alone and by itself shows that there was no intention that it should apply to property purchased for Osage Indians from their restricted funds.

5. It was not the intention of Congress that the Act of June 20, 1936, should apply to the Osage Indians on their property and it is the intention of Congress which must govern.

6. If the purpose and intention of the Act of June 20, 1936, had been to make all the real estate purchased by or for the Osage Indians out of their restricted funds exempt from taxation the Act would not apply to the taxes for the year 1936.

7. It is an invasion of State rights and in violation of the Constitution of the United States to attempt to exempt from taxation large quantities of real estate, which had theretofore been taxable.

PROPOSITION NO. I.

The Act of Congress of June 20, 1936, is in pari materia with other acts of Congress concerning taxation of real estate owned by Osage Indians and must be construed with those Osage Acts, and when so construed the intention of Congress to allow each Osage Indian a tax exemption of not more than 160 acres is clearly shown.

Extracts from the various Osage Acts are set out in Appendix A to this brief, the emphasis therein being ours.

It is very apparent from these special acts of Congress relative to the Osage Indians that Congress has specifically provided that certain property of the Osage Indians shall be taxable and that each Indian who has not received a certificate of competency shall be entitled to a tax exemption of 160 acres and no more.

The Osage Acts above referred to deal with taxation of real estate owned by Osage Indians.

The Act of June 20, 1936, was intended to apply generally to those landless Indians for whom the government had purchased lands and placed the Indians thereon and gave them to understand that the land would be theirs free from taxation. The Osage Acts apply specifically to the Osage Indians.

"All acts in pari-materia are to be taken together as if they were one law."

Ryan v. *Carter*, 93 U. S. 78, 23 L. ed. 807;
Wells v. *Pontotoc County*, 102 U. S. 625, 26 L. ed. 122;
United States v. *Central P. R. Co.*, 118 U. S. 235, 6 S. St. Rep. 1038, 30 L. ed. 173.

"All laws on the same subject are to be taken together."

Ryan v. *Carter*, 93 U. S. 78, 23 L. ed. 807;
Ex parte Karstendick, 93 U. S. 393, 23 L. ed. 889;
Greenleaf v. *Goodrich*, 101 U. S. 278, 25 L. ed. 845;
Galveston H. & S. A. R. Co. v. *Texas*, 170 U. S. 226, 18 S. St. Rep. 603, 42 L. ed. 1017.

"The construction of a particular act must be made in connection with previous legislation on the subject."

Corralitos v. *United States*, 178 U. S. 280, 20 S. Ct. Rep. 941, 44 L. ed. 1069.

"Two laws relating to the same subject are to be construed together and where the later one contains no clause expressly repealing any of the provisions of the earlier one, both are to be considered as in full force so far as there is no repugnancy between them."

The Star, 3 Wheat. 78, 4 L. ed. 338.

"Three statutes in pari-materia must be read together and no part of the previously existing law upon the same subject is to be regarded as inoperative unless no other construction of the later legislation is reasonable."

United States v. *Munday*, 222 U. S. 175, 32 S. Ct. Rep. 53, 56 L. ed. 149.

"All former statutes on the same subject, whether repealed or unrepealed, may be considered in construing provisions that remain in force."

Viterbo v. *Friedlander*, 120 U. S. 707, 7 S. Ct. Rep. 962, 30 L. ed. 776.

"As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown."

United States v. *Jefferson Elec. Mfg. Co.*, 291 U. S. 386, 54 S. Ct. Rep. 443, 78 L. ed. 859;
United States v. *Arizona*, 295 U. S. 174, 55 S. Ct. Rep. 666, 79 L. ed. 1371.

The brief of the respondents has set forth in the appendix the full opinion of the Solicitor for the Interior Department, Mr. Stanley Reed, rendered on March 13, 1937, concerning the Act of June 20, 1936.

In the opinion of the attorney general it is recognized that the Act of June 20, 1936, is in pari-materia with the earlier acts of Congress concerning the Osages for he states: "It is necessary to examine certain prior legislation having to do with the taxability of lands belonging to the mem-

bers of the Osage Tribe." He then quotes that part of section 1 of the Act of March 2, 1929, which has been quoted in the appendix, and which provides, "that the tax exempt land of any such Indian allottee, heir, or devisee, shall not at any time exceed 160 acres."

He then reasons as follows:

> "It is obvious that the land exempted from taxation by the main clause of this enactment is limited to homestead allotments. Considering the language of the provision as a whole it seems clear that the purpose of the main clause is to exempt from taxation homestead allotments generally, and that the purpose of the proviso is merely to limit the amount of such homestead land that the individual Indian may hold exempt from taxation. The restriction of the proviso is made to apply only to allottees, etc., mentioned in the main provision, and there would seem to be no reason why the land referred to in the proviso should not likewise be limited to homestead allotments.
>
> "Since, therefore, the 1929 statute is concerned with homestead allotments and that of 1936 with lands purchased with restricted or trust funds and restricted as to alienation or encumbrance, the earlier statute is not affected by the latter, and they may operate in entire harmony."

To us it seems apparent that the reasoning of the attorney general in the foregoing two paragraphs is very faulty. The conclusion reached is that Congress intended to exempt homesteads from taxation up to the amount of 160 acres and that, therefore, if the homestead exceeded 160 acres that part of the homestead which exceeded 160 acres was not to be exempted from taxes, but if the Indian

owned other land which was not a homestead it might be exempted from taxation.

The conclusion is contrary to the history of all Indian legislation and is particularly contrary to the policy of Congress with reference to the Osage Indians.

In the first place the language is clear. It plainly says that "*tax exempt land shall not at any time*" exceed 160 acres.

The plain purpose of this provision was overlooked by the Attorney General. The homestead allotment of each original Osage allottee was by the Allotment Act exempted from taxation for a period of 25 years or during the lifetime of the allottee.

The Osage Act of March 2, 1929, extended the trust period, and extended restrictions against alienation for another period of over 25 years or until January 1, 1959. It also extended the tax exemption of the homestead allotments for another period of more than 25 years but instead of providing for the homestead allotment to become taxable upon the death of the allottee the provision was that the homestead allotment should remain exempt from taxation as long as the original allottee of one-half or more Indian blood or his heirs or devisees held the title to that allotment.

Now the heirs and devisees of some of the allottees were bound to be persons who were themselves allottees and who already had 160 acres of tax exempt land, and therefore the plain purpose of Congress was by this pro-

vision to specifically declare that no one Indian could have more than 160 acres of tax exempt land.

The surplus allotments had become taxable within three years after the time of allotment under the provisions of the Allotment Act; so that the only tax exempt land which the Osages had or could have under the legislation which existed at the time of the passage of the Act of March 2, 1929, was the first selection, or the homestead allotment. Therefore there could have been no intention on the part of Congress that an Osage Indian could have a homestead in excess of 160 acres but could have only 160 acres of such homestead exempted from taxation. On the other hand Congress could not have intended that he might have exempted from taxation other real estate, provided it was not a part of the homestead, while he could not have that part of his homestead exempted which exceeded the 160 acres.

The purpose of the provision then was to extend the exemption from taxation of the homestead allotment for another period of 25 years or more; provided it was still held by the original allottee or his heirs or devisees. In other words, the exemption was extended to the heirs and devisees but it was recognized that the heirs and devisees might already have tax exempt lands and Congress was careful to provide that no Indian should have more than 160 acres of tax exempt land.

A homestead is by the Oklahoma law a tract of land not to exceed 160 acres. The homestead allotment of

Osage Indians was a tract of land of 160 acres. By no provision of Congress could the allotted homestead be increased to more than 160 acres, and by no provision of the Oklahoma law could a homestead be more than 160 acres. It seems to us, therefore, that there is no logic at all which supports the statement that Congress intended by this provision of the Act of March 2, 1929, to say that the Osage Indian might have more than 160 acres of land exempt from taxation provided it was not a homestead but that he could have only 160 acres exempt from taxation, if it were a homestead.

The homestead, whether a homestead under the state law or a homestead under the Osage Acts, which was only the first selection, has always received favorable legislation whether that legislation were enacted by the National Congress or by the State Legislature, and, if the Congress were intending to provide, or permit additional land tax exemptions to the 160 acres homestead, it certainly would have permitted exemption of the additional homestead, that is additional to the 160 acres had there been any such additional homestead, but Congress knew, or at least those in charge of the Osage legislation knew, that the Osage homestead, and the homestead under the Oklahoma law, was limited to 160 acres and that there could be no additional homestead so that when providing "tax exempt land of any such Indian allottee, heir or devisee shall not at any time exceed 160 acres", there could have been and was no intention that that provision should apply only to the homesteads and only in cases where the homestead

exceeded 160 acres. The provision undoubtedly means just what it says:—That no Osage Indian shall at any time have more than 160 acres of tax exempt land.

A homestead, as it is generally considered, is the home of the homesteader; the place on which he lives. The Attorney General by his opinion concedes that the Act of June 20, 1936, could not apply to the homesteads of the Osages. We do not know what kind of homestead he had in mind but, if he had in mind the place of abode, then his interpretation of the land to which the Act of June 20, 1936, was to apply is entirely different from that of Senator Thomas.

As will be shown by later quotations herein contained, Senator Thomas stated that the purpose of the bill was to relieve from taxation lands which the Government had purchased for "landless Indians". Senator Thomas also stated that the Government had "assigned Indians to reside upon said land".

Then when Section 2 of the Act of June 20, 1936, was amended by the Act of May 19, 1937, the purpose of Congress in passing the Act of June 20, 1936, was further shown by providing that only the homestead of not to exceed 160 acres of land should be exempt from taxation. It is, therefore, very plain that Congress at all times intended that the Osages should have 160 acres and no more land of any kind or nature exempt from taxation.

The whole of the legislation shows positively the intention and purpose of Congress to that effect.

It should be noted that very soon after the Attorney General's opinion there was introduced into Congress a bill to repeal section 2 of the Act of June 20, 1936, with the result that it was amended on May 19, 1937, to show what had been the intention of Congress all along that the exemption should not exceed 160 acres.

It should, also, be noted that the Commissioner of Indian Affairs recommended the amendment to section 2 which was adopted which shows also the intention of the Bureau of Indian Affairs to the effect that the tax exemption was intended to be limited to only 160 acres.

The Attorney General in his opinion next discusses the Osage Act of February 27, 1925, (43 Stat. 1008) and calls attention to the fact that section 1 of that Act authorizes the Inferior Department to invest the funds of Osages in real estate. He then calls attention to section 3 of the Act which provides that the real estate so purchased shall not be subject to "A lien of any debt, claim, or judgment, except taxes".

The Attorney General then concludes that it was the intention of Congress that the real estate so purchased should be subject to taxation but he follows that conclusion by another to the effect that when Congress passed the Act of June 20, 1936, they changed their intention and decided that the real estate so purchased should be exempt from taxation.

There can be no question but that the Act of February 27, 1925, specifically declared the intention of Con-

gress to the effect that such real estate purchased from restricted funds should be taxable and that it was taxable and taxes were paid on such real estate so purchased.

The Congress again affirmed that intention when the 1929 Act was passed, in which it was specifically provided that no Osage Indian should have exempt from taxation more than 160 acres of land, and when the Act of June 20, 1936, was under consideration by Congress the Chairman of the Committee expressed the purpose and intention to exempt only land purchased for "landless Indians", and in cases where the Department had assigned the Indians to live upon the land.

The Congress again declared what its intention was when it passed the Act of June 20, 1936, by passing the amendment of May 19, 1937, in which it was specifically declared that the exemption should not exceed 160 acres.

The Attorney General did not discuss the earlier Osage Acts but they have been discussed by the Supreme Court of the United States in the case of *McCurdy* v. *United States*, 246 U. S. 264, 38 S. Ct. Rep. 289, 62 L. ed. 706, in a case which involved the taxability of land purchased for an Osage from his restricted funds, the conveyance containing a restriction against alienation without the approval of the Secretary of the Interior. In that case the Supreme Court stated:

> "And there are in both the Act of 1906 and in that of 1912, provisions which show that Congress intended to restrict the tax exemption. By section 2 of the Act of 1906 the surplus lands became taxable af-

ter three years, even if they remained inalienable. By section 7 of the Act of 1912 both the lands and funds of allottees or their heirs are protected against claims arising prior to competency, inheritance, or removal of restrictions: but it is expressly provided 'that nothing herein shall be construed so as to exempt any such property from liability for taxes'."

Earlier in that same opinion the Supreme Court interprets the intention of Congress generally to gradually emancipate the Osage Tribe of Indians.

The same or similar interpretation of the policy of Congress toward the Indians is discussed in the case of *Shaw* v. *Gibson-Zahniser Oil Corporation*, 276 U. S. 575, 48 S. Ct. Rep. 333, 72 L. ed. 709, opinion by Mr. Justice Stone, wherein this language is used:

> "In this, as in other Indian legislation, opportunity is afforded for their emancipation by imposing upon them duties as well as giving them the privileges of citizens and property owners, including the duty to pay taxes."

It is well-established law that an Act of Congress must be construed in connection with the other Osage Acts when it is being undertaken to apply it to the Osage Indians and it then seems very clear that there was no intention of Congress to exempt the property in question from taxation and that the Acts when construed together did not exempt it from taxation.

The foregoing argument is not answered by a contention that section 2 of the Act of June 20, 1936, is not ambiguous and, therefore, requires no interpretation for the reason that the whole act must be construed together.

and when so construed it is ambiguous; and for the further reason that acts in pari-materia must be construed together whether or not the last act is ambiguous.

The Act is entitled thus:—"An Act to relieve restricted Indians whose lands have been taxed or have been lost by failure to pay taxes, and for other purposes."

The past participle "have been" is used. "Have been taxed", or "have been lost". The relief is for what has already been done, and the relief was in the form of a $25,000.00 appropriation to pay taxes. This could not apply to the Osages for the taxes against property of the Osages purchased with restricted funds for just one year exceed that sum.

By the further terms of the act itself the Osages are excluded from its operation. The act is to apply to land "heretofore purchased out of trust or restricted funds of the Indian, *where the Secretary finds that such land was purchased with the understanding and belief on the part of said Indian that after purchase it would be non-taxable*".

There could have been no "understanding or belief" by the Osages that the land purchased for them out of their restricted funds would be non-taxable, for the very act which authorized the investment of the restricted funds of the Osages provided for the payment of taxes and the land so purchased for them had been taxed and taxes had been paid on it for years prior to 1936.

Now the obvious purpose of legislation is to remedy some evil, to correct some existing situation. Here Con-

gress pointed out the evil to be remedied and showed its purpose to correct it. The government was buying land for landless Indians and creating homes for them on that land. Those Indians had been given to understand that their homes would be tax free but for some cause the government failed to make them tax free. Hence the remedy:

First, pay the accrued taxes, and, second make those same lands tax free so that it would not be necessary to continue to pay taxes on them.

Acts in pari-materia must be construed together whether or not the last act is ambiguous. This is especially true where there is no expressed intention in the later act to repeal or modify the earlier one.

As was said by Mr. Justice Story in the case of *The Star*, 3 Wheaton 78, 4 L. ed. 338:

> "In the first place, the section in question contains no repealing clause of any of the provisions of the salvage act of 1800, and therefore the whole laws on this subject are to be construed together, and unless so far as there is any repugnancy between them, are to be considered as in full force."

We quote from the case of *Posadas* v. *National City Bank*, 296 U. S. 497, 80 L. ed. 351:

> "3. syl. Repeals by implication are not favored; and where there are two acts upon the same subject, effect should be given to both if possible.
>
> "5. syl. The mere fact that a later statute covers the whole subject of an earlier one and embraces new provisions does not demonstrate an intention to substitute the later act for the earlier, so as to effect an implied repeal.

"6. syl. The implication which will effect the repeal of a statute must be a necessary one."

In *United States* v. *Jefferson Electric Manufacturing Co.*, 291 U. S. 386, 54 S. Ct. 443, 78 L. ed. 859, this is said:

> (From opinion p. 869.) "As a general rule where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown."

In the discussion of these Acts in the local United State District Court in the Osage cases we were reminded by our adversaries that Mr. Stanley Reed had been elevated to the Supreme Court of the United States. We replied that we, of course, had respect for Mr. Reed and for his opinions but that we did not believe his appointment to the highest court of the nation made his opinion rendered as solicitor for the Interior Department infallible. As such solicitor he would have doubtless felt it to be his duty to resolve all doubts in favor of the department. As a judicial officer he would give the question more weighty and deliberate consideration to be sure that his decision was right for his opinion then would be declaring the law, while as solicitor he was merely outlining a line of action to be followed by the departmental officials, until the act received judicial interpretation.

We note that the opinion does not cite a single judicial opinion. It shows unfamiliarity with the Osage Acts. It stated, for instance, that section 1 of the Act of June 20, 1936, is "applicable to the members of the Osage Tribe". We think it must be conceded that section 1 of the Act cannot be applicable to the Osages. It is at least clear that it cannot for no land was purchased for the Osages with the understanding that it would not be taxable.

The opinion is correct in assuming that the 1936 act must be construed with the earlier Osage acts but the reasoning is faulty when the attempt is made to construe them together. It is said by the opinion that prior to the passage of the 1936 act the lands purchased for the Osages were taxable and had been so made by Congress. It is then stated that the 1936 act and prior acts could operate together and without a repeal of the former acts.

They can operate together by construing the 1936 act as it was intended by Congress, that is, that it should apply to those landless Indians for whom homes had been purchased by the government.

PROPOSITION NO. II.

A Special Act on the same subject controls a general act, or the Special act must be construed as the exception to the general act even though the special act was first enacted.

"General and specific provisions in apparent contradiction, whether in the same or different statutes, *and without regard to priority of enactment*, may

subsist together, the specific qualifying and supplying exceptions to the general rule."

Townsend v. *Little*, 109 U. S. 504, 3 S. Ct. Rep. 357, 27 L. ed. 1012.

"Special and general statutes relating to the same subject should be treated as one law so far as this reasonably can be done."

British-American Co. v. *Board of Equalization*, 299 U. S. 159, 57 S. Ct. 132, 81 L. ed. 95.

The Osage Acts are Special Acts which apply especially to the Osages, while the Act of June 20, 1936, is a general act.

PROPOSITION NO. III.

In determining the purpose and meaning of the Act of June 20, 1936, the court should take into consideration the amendment of that Act by the Act of May 19, 1937.

In the opinion in *Tiger* v. *Western Investment Co.*, 221 U. S. 280, 55 L. ed. 738, 31 S. Ct. Rep. 578, it is said:

"When several acts of Congress are passed, touching the same subject-matter, subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject. *Cope* v. *Cope*, 137 U. S. 682, 34 L. ed. 832, 11 S. Ct. Rep. 222; *United States* v. *Freeman*, 3 How. 556, 11 L. ed. 548."

Congress by the passage of the amendment Act of May 19, 1937, clearly declared what its intention was at the time of the passage of the Act of June 20, 1936, and that declared intention was that the act should apply to

only 160 acres of land purchased for landless Indians for a home.

PROPOSITION NO. IV.

The Act of June 20, 1936, taken alone and by itself shows that there was no intention that it should apply to property purchased for Osage Indians from their restricted funds.

From the argument heretofore made it is clear that Congress was not legislating concerning the Osages when appropriating $25,000.00 to pay back taxes.

At that time the Osage Indians already owned hundreds of thousands of dollars worth of real estate which they knew and which the officials of the Department of the Interior knew was taxable.

It is, therefore, quite obvious from the wording of the act itself that neither Congress nor the Indian Bureau expected this act to apply to the real estate which had been purchased for Osage Indians from their restricted funds.

As has been herein pointed out it is equally as apparent that Congress was not legislating concerning the Osage Indians when it was providing for the payment of taxes: —"Where the Secretary of the Interior finds that such land was purchased with the understanding and belief on the part of said Indian that after the purchase it should be non-taxable".

It may be stated that section 2 of the act is more broad in its terms than section 1, and that section 2 should be construed alone and by itself, but the Supreme Court of

the United States has many times held that an act must be construed as a whole. See *McKee* v. *United States*, 164 U. S. 287, 17 S. Ct. Rep. 92, 41 L. ed. 437; *Red Bird* v. *United States*, 203 U. S. 76, 27 S. Ct. Rep. 29, 51 L. ed. 96; *Talbott* v. *Silver Bow County*, 139 U. S. 438, 11 S. Ct. Rep. 594, 35 L. ed. 210; *United States* v. *Boisdore*, 8 How. 112, 12 L. ed. 1009.

PROPOSITION NO. V.

It was not the intention of Congress that the Act of June 20, 1936, should apply to the Osage Indians or their property and it is the intention of Congress which must govern.

Extracts from Congressional records and Committee reports are set out in Appendix B, the emphasis therein being ours.

It is so well established that the intention of Congress governs that it would seem to be unnecessary to cite authorities to that effect, but we quote from a few in order to show the force of the rule and in order to present the related rules showing the policy of the courts to, where necessary, limit or extend the use of words in order to require them to fit the general purpose and intention of Congress:

> "Construction is the drawing of conclusions respecting subjects that lie beyond the direct expression of the text, from elements known from and given in the text, conclusions which are in the spirit though not within the letter of the text."
>
> *United States* v. *Farenholt*, 206 U. S. 226, 27 S. Ct. Rep. 629, 51 L. ed. 1036.

"The intention of Congress is an all important factor in the interpretation of statutes enacted by it."

United States v. *Stone & Downer Co.*, 274 U. S. 225, 47 S. Ct. Rep. 616, 71 L. ed. 1013.

"The Federal Supreme Court will restrain the wider and doubtful prohibitions of a statute so as to make them accord with the narrow and more reasonable conditions and thus harmonize the entire law."

United States ex rel. Atty. Gen. v. *Delaware & H. Co.*, 213 U. S. 366, 29 S. Ct. Rep. 527, 53 L. ed. 836.

"The operation of a statute may be restrained within narrower limits than its words import, where it is evident that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it."

Brewer v. *Blougher*, 14 Pet. 178, 10 L. ed. 408.

"Additional words of qualification needed to harmonize a general and a prior special provision in the same statute should be added to the general provision, rather than to the special one."

Rodgers v. *United States*, 187 U. S. 83, 22 S. Ct. Rep. 582.

"A thing within the intention of the makers of a statute is as much within the statute as if it were within the letter."

United States v. *Babbit*, 1 Black. 55, 17 L. ed. 94.

"A thing which is within the intention of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers."

Northwestern Mut. L. Ins. Co. v. *Gridley*, 100 U. S. 614, 25 L. ed. 746.

"In construing a statute, the court is not always confined to a literal reading even though where the words are clear and unambiguous they will control, but may consider its object and purpose, the things with which it is dealing, and the condition of affairs which lead to its enactment, so as to effectuate rather than destroy the spirit and force of the law which the legislature intended to enact."

American Tobacco Co. v. Werckmeister, 207 U. S. 284, 28 S. Ct. Rep. 72, 52 L. ed. 208.

It is also well established that the intention of Congress may be ascertained from the reports of Committees of Congress and from the statements of Committee Chairman or sponsors of the bill explaining its meaning. See *Duplex Printing Press Co., v. Deering*, 254 U. S. 443, 41 Sup. Ct. Rep. 172, 65 L. ed. 349.

PROPOSITION NO. VI.

If the purpose and intention of the Act of June 20, 1936, had been to make all the real estate purchased by or for the Osage Indians out of their restricted funds exempt from taxation the Act would not apply to the taxes for the year 1936.

The Circuit Court of Appeals of this Circuit has so ruled. It is our information that no one has challenged the correctness of that holding of the Circuit Court of Appeals upon this point. Therefore no space will be used in the presentation of it.

PROPOSITION NO. VII.

It is an invasion of State rights and in violation of the Constitution of the United States to attempt to exempt large quantities of real estate, which had heretofore been taxable, from taxation.

The briefing of this question is left to the parties to this suit.

It is suggested, however, that:

1. The established policy of Congress has been to gradually grant to the Indians the freedom, duties, and responsibilities of full unrestricted citizenship, and that the 1936 Act, if construed as contended for, is in contravention of that policy.

2. That there is a distinction between ownership of property by the government and its ownership by wards of the government and that, if the property is actually not an instrumentality of the government it is not made so by declaration of Congress.

This language is from the case of *United States* v. *Wright*, 53 Fed. (2d) 300:

> "(5) On the first question, therefore, we think there can be no doubt that Congress has the power to legislate for the protection of the Eastern Band of Cherokee Indians and for the regulation of the affairs of the band. It is clear, however, that not every act of Congress with relation to the band would come within the power. As heretofore stated, the members of the band, by separation from the original tribe, have become subject to the laws of the state of North Carolina; and clearly no act of Congress in their behalf would be valid which interfered with the exercise of the police power of the state. *In such a situation, a*

law to be sustained must have relation to the purpose for which the federal government exercises guardianship and protection over a people subject to the laws of one of the states; i. e., it must have reasonable relation to their economic welfare." (Emphasis ours).

CONCLUSION.

It is urged in conclusion that it seems clear that the Act of June 20, 1936, was not intended to apply to the investments of the Osage Indians, and may the hope be again expressed that no decision will be rendered herein, which would preclude the presentation of the questions herein raised in the suits now pending against Osage County, Oklahoma.

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March, 1943.

APPENDIX A.

The seventh section of the Osage Act of June 28, 1906, (34 St. L. 539) which is frequently referred to as the Osage Allotment Act, reads as follows:

"Seventh. That the Secretary of the Interior, in his discretion, at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of this Act, except his homestead, *which shall remain inalienable and non-taxable for a period of twenty-five years*, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully competent and capable of transacting his or her own business and caring for his or her own individual affairs: Provided, *that upon the issuance of such certificate of competency the lands of such member (except his or her homestead), shall became subject to taxation*, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States: Provided, *that the surplus lands shall be non-taxable for the period of three years from the approval of this Act, except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress*: And provided further, that nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years and the royalty to be paid to said tribe as hereinafter provided: And provided further, That the oil, gas, coal and other minerals upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years, unless otherwise provided for by Act of Congress."

Section 1 of the Osage Act of April 18, 1912 (37 St. L. 86) reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that until the inherited lands of the deceased members of the Osage Tribe of Indians shall be partitioned or sold *the Secretary of the Interior be, and he hereby is, authorized to pay the taxes on said land out of any money due and payable to the heirs* from the segregated decedent's funds in the Treasury of the United States."

Section 7 of the same act reads as follows:

"Sec. 7. That the lands allotted to members of the Osage Tribe shall not in any manner whatsoever be encumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency, or removal of restrictions of alienation; nor shall the lands or funds of Osage tribal members be subject to any claim against the same arising prior to grant of a certificate of competency. That no lands or moneys inherited from Osage allottees shall be subject to or be taken or sold to secure the payment of any indebtedness incurred by such heir prior to the time such lands and moneys are turned over to such heirs: Provided, however, That inherited moneys shall be liable for funeral expenses and expenses of last illness of deceased Osage allottees, to be paid under order of the county court of Osage county, state of Oklahoma: *Provided further, That nothing herein shall be construed so as to exempt any such property from liability for taxes.*"

Section 1 of the Act of February 27, 1925 (43 St. L. 1008), authorizes the Secretary of the Interior to pay the Osage Indians less than their income and to conserve the balance and to invest the balance or remainder. This language is used:

"The Secretary of the Interior shall invest the remainder, *after paying the taxes of such members*, in United States bonds, Oklahoma State bonds, real estate, first mortgage real estate loans not to exceed 50 per centum of the appraised value of such real estate, and where the member is a resident of Oklahoma such investment shall be in loans on Oklahoma real estate, stock in Oklahoma building and loan associations, livestock, or deposit the same in banks in Oklahoma, or expend the same for the benefit of such member, such expenditures, investments, and deposits to be made under such restrictions, rules, and regulations as he may prescribe."

Section 3 of the Act of February 27, 1925, (43 St. L. 1008) reads as follows:

"Sec. 3. Lands devised to members of the Osage Tribe of one-half or more Indian blood or who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment, *except taxes*, or be subject to alienation, without the approval of the Secretary of the Interior."

By the Act of March 2, 1929, (45 St. 1478) the trust period was extended until the 8th day of April, 1959, and personal restrictions until January 1, 1959 by this provision:

"The lands, moneys, and other properties now or hereafter held in trust or under the supervision of the United States for the Osage Tribe of Indians, the members thereof, or their heirs and assigns, shall continue subject to such trust and supervision until January 1, 1959, unless otherwise provided by Act of Congress."

The same Act contains the following provision:

"Homestead allotments of Osage Indians not having a certificate of competency shall remain exempt from taxation while the title remains in the original allottee of one-half or more of Osage Indian blood and in his unallotted heirs or devisees of one-half or more of Osage Indian blood until January 1, 1959: *Provided, That the tax-exempt land of any such Indian allottee, heir, or devisee shall not at any time exceed one hundred and sixty acres.*"

APPENDIX B.

The Congressional Record for the Senate for June 6, 1936, discloses that the following proceedings were had:

"Page 9322. RELIEF OF INDIAN LANDS FROM TAXATION.

"The Senate proceeded to consider the bill (H. R. 7764) to relieve restricted Indians whose lands have been taxed or have been lost by failure to pay taxes, and for other purposes.

"Mr. King: Mr. President, I should like to have an explanation of the bill.

"Mr. Thomas, of Oklahoma: Mr. President, this bill seeks to accomplish certain purposes, which I will explain. Formerly the Congress authorized the Secretary of the Interior *to buy* land for *landless Indians*. The Secretary proceeded to buy the lands and assigned the Indians to reside upon such lands. The recommendation or assertion was made to the Indians that the land would be theirs and they would have no taxes to pay. Some lands were taken from private ownership and assessing authorities proceeded to assess the land for taxes. The taxes were assessed and stand against the land.

"In some cases tax warrants have been issued and the Indians have been threatened with dispossession. The department believes that in order to keep faith with the Indians, the tax warrants and tax assessments should be paid and the title to the lands cleared. The bill authorizes the appropriation of money for that purpose.

"Section 2 provides that *the lands so secured* shall hereafter be non-taxable.

"The President pro tempore. The question is on the third reading and passage of the bill.

"The bill was ordered to a third reading, read the third time, and passed, as follows" (The Act of June 20, 1936, follows in the record).

When it was ascertained that the departmental officials sought to apply this act of June 20, 1936, to the Osage Indians there was introduced into Congress and passed an amendment to the Act and the amendment became a law on May 19, 1937, so that the Act of June 20, 1936, as it is construed by the department, was in force for one month and one day less than one year.

The Committee on Indian Affairs made a report on the amendment. Senator Thomas as Chairman of the Committee on Indian Affairs made that report, which is as follows:

"The Committee on Indian Affairs, to whom was referred the bill (S. 150) providing for the repeal of Section 2 of Public Law No. 716 of the Seventy-fourth Congress, being an act entitled 'An Act to relieve restricted Indians whose lands have been taxed, or have been lost by failure to pay taxes, and for other purposes' having considered the same, report thereon with a recommendation that it do pass with the following amendment:

"On page 1 add a new section at the end of the bill as follows:

"Sec. 2. All homesteads heretofore purchased out of the trust or restricted funds of individual Indians are hereby declared to be instrumentalities of the Federal Government and shall be non-taxable until otherwise directed by Congress: Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior; and provided further, That the Indian owner or owners shall select,

with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town or city property, not exceeding in cost $5,000.00, to be designated as a homestead.

"This proposed legislation is for the repeal of section 2 of the act of June 20, 1936, Public Law No. 716, Seventy-fourth Congress (41 Stat. L. 1542).

"The said act of June 20, 1936, (49 Stat. L. 1542) was designed to bring relief and reimbursement to Indians who by failure to pay taxes have lost or now are in danger of losing lands purchased for them under supervision, advice, and guidance of the Federal Government, which losses were not the fault of the Indians, *but were purchased with the understanding and belief on their part and induced by representations of the Government that the lands be non-taxable after purchase. It was intended that such lands would be redeemed* out of the fund of *$25,000* authorized to be appropriated under the provisions of said Act of June 20, 1936 (41 Stat. L. 1542).

"Since the passage of said act of June 20, 1936 (49 Stat. L. 1542) it was found the provisions of section 2 thereof would apply to lands and other property purchased by restricted Indian funds, which would exempt from taxation *vast quantities* of property, such as *business buildings*, farm lands which are not homesteads, etc.

"The Commissioner of Indian Affairs appeared before the committee and suggested the amendment herein proposed, which proposed amendment was adopted and herein recommended by your committee."